Index to Volumes 3 and 4, with Abstracts

This Index provides a guide to Articles, Comments, and featured Book Reviews published in Volumes 3 and 4 of the *American Journal of Law & Medicine*, covering Vol. 3, No. 1 (Spring 1977); Vol. 3, No. 2 (Summer 1977); Vol. 3, No. 3 (Fall 1977); Vol. 3, No. 4 (Winter 1977-78); Vol. 4, No. 1 (Spring 1978); Vol. 4, No. 2 (Summer 1978); Vol. 4, No. 3 (Fall 1978); and Vol. 4, No. 4 (Winter 1979). An index to Volumes 1 and 2 appears in Vol. 3, No. 1 of the *Journal*. The reader is reminded that previous volumes of the *Journal* contain, in addition to Articles and Comments, extensive reference materials providing access to selected medicolegally relevant book releases, court decisions, articles, federal legislative and executive action, professional organizations, resource centers, and periodical publications.

ARTICLES AND COMMENTS

Altschule, Mark D., *Bad Law, Bad Medicine,* Fall 1977, 295-301.

In this Comment, Dr. Altschule contends that in a variety of ways the American legal system currently is endangering the existence of positive physician-patient relationships, which are essential to the effective practice of medicine. First, he contends, physicians are exposed to an excessively high risk of liability for malpractice, and as a result must substitute the use of "defensive," often unnecessary laboratory tests for reliance on their own sound medical judgment. Second, the confidentiality of communications between physicians and patients is receiving inadequate legal protection; therefore, patients often are hesitant to reveal aspects of their medical history that may be critical to their case. Third, the federal government, by its medically inappropriate attempts to ban drugs that do not meet certain federal "safe and effective" standards, and to ban food additives that fail to pass certain federally controlled tests aimed at determining whether the additive causes cancer, is making it increasingly difficult for physicians to prescribe substances that may be of great value to their patients. The author warns that our society's failure to substantially alleviate such problems is likely to lead to an inferior brand of medical practice.

American Hospital Association, *Health Specialists' Guide to the Federal Legislative Process and to the Process of Federal Program and Regulation Development,* Summer 1977, 209-19.

In recent years, approximately 25,000 legislative proposals have been introduced by Members of the House of Representatives and the Senate during each Congress. Among these, perhaps 2,000 or more in each Congress are health-related measures. Some of these measures—although relatively few—are passed by the House and Senate and signed into law by the President. If the law creates or modifies a federal program, it becomes the focus of program and regulation development in the executive branch of government.

A difficult task faces parties who seek to support, alter, defeat, or simply understand specific federal action in the health field. The legislative process, as each proposal moves from first draft to enacted law, is complex, time-consuming, and full of obstacles. Furthermore, the process of program and regulation development can be, and often is, more arduous than the process of legislation.

To navigate these choppy and often unpredictable seas, you will need a clear map. This brief summary of the federal legislative and regulatory processes, prepared by the American Hospital Association specifically for persons working in the health field, is intended both as a map and as an incentive for further study. Information in greater detail is available from numerous other sources cited in the *Guide.*

Annas, George J., *Allocation of Artificial Hearts in the Year 2002: Minerva v. National Health Agency,* Spring 1977, 59-76.

The rapid growth of medical technology gives rise to difficult dilemmas concerning the appropriateness of, and access to, new equipment and devices capable of maintaining life or improving its quality. Such a dilemma already exists, for example, with regard to kidney dialysis machines. In 1972, Congress amended the Social Security Act to make such machines available under Medicare to all who needed them. But almost immediately the overwhelming cost of such equipment—in the billions of dollars—made the original appropriations totally inadequate, and prompted serious questions of whether access to kidney dialysis should be made available at public expense—and, if so, to whom.

This Comment takes the reader 25 years into the future through the medium of a hypothetical U.S. Supreme Court decision regarding a federal health agency's regulations that establish a system for allocating artificial hearts to those whose lives can be lengthened by implantation. The author assumes that a national health insurance system has been enacted and implemented, that all physicians are employees of the federal government,

and that the enabling legislation has placed broad powers in the hands of the federal government to regulate the development and allocation of scarce and expensive medical resources. The opinions of the various Supreme Court Justices reflect a broad range of legal and ethical viewpoints, and—in keeping with the difficult, indeed frightening, life-or-death issues involved—are often intensely personal in nature.

Annas, George J., *Reconciling Quinlan and Saikewicz: Decision Making for the Terminally Ill Incompetent,* Winter 1979, 367-96.

One of the most perplexing problems in the medicolegal field concerns the criteria on which decisions not to treat terminally ill incompetent patients should be made. These decisions traditionally have been made by physicians in hospitals—sometimes with the assistance of the patient's family—on the basis of their perceptions of the patient's "best interests." Recently, two state supreme courts have ruled on this question. The New Jersey Supreme Court, in the *Quinlan* case, developed a medical prognosis criterion, and permitted the patient's guardian, family, and physicians to apply it with the concurrence of a hospital "ethics committee." The Massachusetts Supreme Judicial Court, in the *Saikewicz* case, adopted, on different facts, the test of "substituted judgment" to be applied by a probate court after an adjudicatory hearing. The two cases have been interpreted by many in the medical profession as representing conflicting viewpoints—one supportive of traditional medical decision making and the other distrustful of it.

It is the thesis of this Article that *Quinlan* and *Saikewicz* are in fundamental agreement and can be reconciled by the next state supreme court that rules on this question. Both courts enunciate a constitutional right to refuse life-sustaining treatment, based on the right to privacy. They agree that incompetents should be afforded the opportunity to exercise this right, and that certain state interests can overcome it. They agree also that physicians should be permitted to make medical judgments, and that societal judgments belong in the courts. The differences in how the opinions are perceived result from the interplay of several factors: the differences in the facts of the cases; the inarticulate use of the term "ethics committee" by the *Quinlan* court; the literal interpretation of the role of such a committee by the *Saikewicz* court; a desire for 100 percent immunity on the part of physicians and hospital administrators in Massachusetts; and advice from their counsel on how such immunity can be guaranteed.

It is the author's hope that this Article will help to dispel much of the misinformation surrounding these two cases, and to refocus the debate on how decisions should be made for the terminally ill incompetent patient on the real issues regarding criteria and the decision-making process that remain to be resolved.

Athan, Lawrence L., Jr., *Protecting the Rights of the Developmentally Disabled: Alternatives to the Existing Statutory and Regulatory Scheme,* Winter 1979, 461-81.

The Developmentally Disabled Assistance and Bill of Rights Act of 1975 and related HEW regulations require each state to establish a system for the protection and advocacy of the rights of developmentally disabled persons as a condition to receiving specified federal funds. This Note contends that, under the present statutory and regulatory scheme, states and governors have broad powers to interfere with the proper functioning of protection and advocacy systems. The Note examines the principal legal remedies, contractual and constitutional, presently available to parties interested in reducing or eliminating such interference, and concludes that such remedies are ineffectual. Instead, the author proposes, the HEW regulations should be revised to strengthen the autonomy of protection and advocacy systems or, alternatively, Congress should amend the 1975 Act to provide for federal administration of such systems.

Baron, Charles H., *Assuring "Detached but Passionate Investigation and Decision": The Role of Guardians Ad Litem in Saikewicz-type Cases,* Summer 1978, 111-30.

The author focuses this Article upon the aspect of the *Saikewicz* decision which determines that the kind of "proxy consent" question involved in that case requires for its decision "the process of detached but passionate investigation and decision that forms the ideal on which the judicial branch of government was created." This aspect of the decision has drawn much criticism from the medical community on the ground that it embroils what doctors believe to be a medical question in the adversarial processes of the court system. The author criticizes the decision from an entirely opposite perspective, arguing that the court's opinion fails in not laying down guidelines that would assure a truly adversary process in *Saikewicz*-type cases. He agrees with the *Saikewicz* court that our democratic institutional structure and societal commitment to individual liberty require that persons not competent to consent for themselves to acts of euthanasia be protected by a process of "detached but passionate investigation and decision." However, he points out that this ideal of the court system was not realized in *Saikewicz* itself and is not likely to be realized in other cases without reform of some of the procedures currently being employed by the courts in "proxy consent" cases. Drawing on previous articles that he has written in related areas, he then proposes a set of guidelines that he believes not only will remove existing procedural deficiencies, but also may reform some aspects of the existing system that have drawn criticism from the medical community.

ganized medicine, and suggests that the new system be introduced on an experimental basis in a single state prior to nationwide implementation.

Cohen, Mark E., *The "Brave New Baby" and the Law: Fashioning Remedies for the Victims of In Vitro Fertilization,* Fall 1978, 319-36.

The birth of the world's first "test-tube baby," a child conceived by *in vitro* fertilization (IVF), raises serious medical, ethical, and legal problems. This Note explores the present controversy over the use of IVF and advocates federal regulation of the technique. Furthermore, this Note argues that, in order to deter unduly hazardous use of IVF and to compensate its victims, an experimenter should be subject to civil liability for either negligent, or willful and nonconsensual, destruction of an IVF conceptus, and held strictly liable when an IVF child is born with severe defects that are attributable to the use of the technique.

Cohen, Mark E., *Park v. Chessin: The Continuing Judicial Development of the Theory of "Wrongful Life,"* Summer 1978, 211-32.

Park v. Chessin, a recent New York case, marked the first step toward judicial acceptance of the theory of "wrongful life." Wrongful life suits involve a cause of action brought by an infant, against a physician, alleging that the physician's failure to inform the child's parents of the possibility of their bearing a severely defective child was the proximate cause of the infant's birth, and thus resulted in harm to the infant. This Note explores recent legal developments that give precedential support to the development of the theory of wrongful life. Furthermore, it demonstrates that the awarding of monetary damages is an appropriate remedy for the wrongful life plaintiff, and it examines possible methods for measuring those damages. The Note concludes with an analysis of the capability of courts to adjudicate wrongful life suits, and of the possible ramifications of judicial acceptance of the theory of wrongful life.

Danner, Douglas, and Sagall, Elliot L., *Medicolegal Causation: A Source of Professional Misunderstanding,* Fall 1977, 303-08.

The authors of this Comment—a lawyer and a physician—suggest that most physicians who are called upon to testify concerning medical issues in personal injury litigation do not understand that judges and attorneys view "causation" quite differently than do members of the medical community. For example, medical practitioners tend to be concerned with *all* possible causes of the patient's current medical condition, whereas legal practitioners in personal injury cases generally focus on a particular event as possibly precipitating, hastening, or aggravating a particular aspect of the patient's condition to the extent that the event in question is, in legal language, the

"proximate cause" of an injurious result. The authors summarize and analyze the differences—and the occasional similarities—between the medical and the legal approaches to causation, in the hope that they will thereby (1) contribute to greater understanding by the two professions of each other's theory and practice, and (2) help the expert medical witness to be more comfortable and more effective in his courtroom role.

Feeley, Rich; Walsh, Diana Chapman; and Fielding, Jonathan E., *Structural Codes and Patient Safety: Does Strict Compliance Make Sense?* Winter 1977-78, 447-54.

The authors of this Comment note recent trends rigidifying the enforcement of building and safety codes for health care facilities and compare the estimated costs (in terms of dollars spent) of those trends with their anticipated benefits (in terms of potential years of human life saved). They estimate that for each potential year of life saved, strict enforcement of the Life Safety Code of the National Fire Protection Association would cost $12.7 to $63.5 million for hospitals and $1.1 to $2.6 million for nursing homes, the latter figure based on Massachusetts's experience. These figures are contrasted to the cost of routine kidney dialysis, which is generally acknowledged to be an extremely expensive technology, costing approximately $20,000 per potential year of life saved. The authors suggest that even if strict enforcement of the Code were fully effective (which, given the current structure of the Code, seems doubtful), a portion of the substantial financial resources expended from our limited national health care budget in hewing to the letter of the Code might be better spent on other activities with greater potential yield in improving the quality of life for patients in hospitals and nursing homes.

Fielding, Jonathan E., *Managing Public Health Risks: The Swine Flu Immunization Program Revisited,* Spring 1978, 35-43.

In this Comment, the Massachusetts Commissioner of Public Health views the federal government's 1976-77 Swine Flu Immunization Program, which was sharply criticized by Dr. Cyril Wecht in a recent Article in this journal, as a classic example of a public policy decision made under conditions of stress and uncertainty. Once the responsible government officials had made a public commitment to immunize the entire populace of the United States, he contends, they found it very difficult to reformulate the program in response to changing information concerning its relative costs and benefits. Dr. Fielding offers suggestions for avoiding in the future some of the problems that surrounded the Swine Flu Program and for preventing further erosion of public confidence in essential preventive medicine programs.

Friedman, Lois D., *Federal Preclusion of State Certificate-of-Need Exemptions for Research and Education Expenditures,* Spring 1978, 91-110.

The National Health Planning and Resources Development Act of 1974 requires each state to enact a certificate-of-need program in compliance with federal standards in order to remain eligible for continued receipt of federal funds for health resource development after 1980. This Note contends that the Act and related HEW regulations preclude states from exempting health care facilities' research expenditures and education expenditures from the scope of the states' certificate-of-need programs. The Note recommends that, as an alternative to such state exemptions, each state develop a streamlined certificate-of-need procedure that fulfills federal requirements while efficiently meeting the special needs of research and education projects.

Havighurst, Clark C., *Health Care Cost-Containment Regulation: Prospects and an Alternative,* Fall 1977, 309-22.

Regulation of the health care system to achieve appropriate containment of overall costs is characterized by Professor Havighurst as requiring public officials to engage, directly or indirectly, in the rationing of medical services. This rationing function is seen by the author as peculiarly difficult for political institutions to perform, given the public's expectations and the symbolic importance of health care. An effort on the part of regulators to shift the rationing burden to providers is detected, as is a trend toward increasingly arbitrary regulation, designed to minimize regulators' confrontations with sensitive issues. Irrationality and ignorance are found to plague regulatory decision making on health-related issues, even though it is the consumer who is usually thought to suffer most from these disabilities. The author argues that consumer choice under some cost constraints is a preferable mechanism for allocating resources because it better reflects individuals' subjective preferences, has a greater capacity for facing trade-offs realistically, and can better contend with professional dominance of the resource allocation process.

In view of the unlikelihood of regulation that is both sensitive and effective in containing costs, the author proposes that we rely primarily on consumer incentives to reform the system. A simple change in the tax treatment of health insurance or other health plan premiums, to strengthen consumers' interest in cost containment while also subsidizing needy consumers, is advocated. Steps to improve opportunities for innovation in cost containment by health insurers, HMOs, and other actors are outlined briefly.

of recent developments in this area, and says that active consumer and provider participation in Health Systems Agencies and Statewide Coordinating Councils is necessary if the new federal expectations concerning health planning and regulation are to be met. Given the rising costs of medical care, stronger federal control might be forthcoming if the purposes of P.L. 93-641 are not achieved.

McLaughlin, Walter H., *A Look at the Massachusetts Malpractice Tribunal System,* Summer 1977, 197-207.

In this Oration, the retired Chief Justice of the Massachusetts Superior Court offers some personal observations on the American medical malpractice crisis and examines the Massachusetts malpractice tribunal system, which is aimed at reducing the incidence of malpractice litigation that is either frivolous or involves simply an "unfortunate medical result" for which the health care provider should not be held accountable. First, the author relates some of his impressions of the evolution of the malpractice crisis and identifies its salient characteristics. Next, he provides a description and an evaluation of the Massachusetts tribunal system. Under that system, the plaintiff in any malpractice action must argue before a special tribunal—composed of a Superior Court judge, an attorney, and a surgeon—that his case raises a "legitimate question of liability." If the tribunal finds that such a question exists, the plaintiff may pursue his case in the normal manner. But if the tribunal finds that the case involves "merely an unfortunate medical result," and if the plaintiff still wishes to press his claim, he must, before proceeding, post a $2,000 bond, which is used to help pay the defendant's litigation costs if the defendant prevails at the trial. The author offers data to support his contention that this tribunal system already is screening out a significant number of inappropriate malpractice claims. Nevertheless, he suggests that the system has substantial problems. He identifies those problems, and proposes methods for solving them.

McMahon, John J., *Judicial Review of Internal Policy Decisions of Private Nonprofit Hospitals: A Common Law Approach,* Summer 1977, 149-81.

Internal policy decisions of private nonprofit hospitals can have a powerful impact. For example, the denial of medical staff privileges to a physician can limit his income and perhaps damage his reputation. The rejection of a prospective father's request to assist his wife in the hospital's delivery room during childbirth deprives the couple of the opportunity to share one of life's most profound experiences.

Plaintiffs aggrieved by, and seeking to challenge, a policy decision of a private nonprofit hospital often turn instinctively to the fourteenth amendment to the U.S. Constitution for a remedy, hoping to prove (1)

"state action" by the hospital and (2) violation of the constitutional rights of the plaintiff. Currently, suggests the author, such an approach is likely to be of limited usefulness. As an alternative, the plaintiff may be able to marshall a common law challenge based on the argument that the hospital, although privately owned, is "affected with a public interest"—that is, it is sufficiently "public" in nature and function that it has a common law duty to serve the public fairly and reasonably, a duty enforceable in a state court. Courts that characterize private nonprofit hospitals as enterprises affected with a public interest (as many courts currently do) will review the challenged hospital policy decision and will decide whether or not, on balance, it was "procedurally fair" and "substantively rational." This common law approach to judicial review, whose roots are deep in medieval English law, will have a bright future if state courts are willing to heed their common law heritage.

Pies, Harvey E., *Control of Fraud and Abuse in Medicare and Medicaid,* Fall 1977, 323-32.

This Comment explores issues concerning the control of fraud and abuse in health programs financed with public funds, specifically the Medicare and Medicaid programs. It summarizes the nature, scope, and possible causes of what some regard as a fraud and abuse "crisis," and points out the difficulties and obstacles facing those who attempt to develop legislative and executive action aimed at controlling fraud and abuse. Recent federal initiatives in fraud and abuse control are examined, and a brief summary of key provisions of H.R. 3 (the Medicare-Medicaid Anti-fraud and Abuse Amendments, which may prove to be a landmark piece of legislation in this area) is provided. The author emphasizes that more effective control of fraud and abuse is necessary if further expansion of government financing of health programs, including national health insurance, is to occur in the near future. At the same time, caution must be taken not to neglect the appropriate use of other mechanisms necessary for reducing the costs of medical care and improving its quality. In addition, it is likely that efforts to stem fraud and abuse will raise important medicolegal and public policy issues that will require careful interdisciplinary consideration.

Relman, Arnold S., *The Saikewicz Decision: A Medical Viewpoint,* Fall 1978, 233-42.

In this Article, Dr. Arnold S. Relman, the Editor of *The New England Journal of Medicine,* takes issue with the 1977 *Saikewicz* decision of the Massachusetts Supreme Judicial Court, which addressed the question of whether chemotherapy should be provided to a severely retarded 67-year-old man who had developed acute leukemia. Dr. Relman interprets *Saikewicz* as requiring that medical treatment decisions involving the life or

death of incompetent patients must receive judicial resolution instead of resolution by the patient's family and physicians. This rule, he asserts, violates medical tradition, and its application will result in serious problems, such as the unnecessary prolongation of the suffering of many seriously ill persons. Dr. Relman proposes, as an alternative to the *Saikewicz* approach, that in such cases judicial resolution should occur only when there is disagreement, concerning treatment, among next of kin, or between next of kin and attending physicians, or when there is a complaint of injury or of wrongdoing. In all other situations, resolution solely by next of kin and attending physicians should be sufficient. Adequate protection of the interests of the incompetent patient could be achieved by a requirement that the physician in charge document in the medical record that the treatment decision received the concurrence of the family and advance approval of a group of the physician's professional colleagues who have no vested interest in the outcome of the decision.

Robertson, Gerald B., *Civil Liability Arising from "Wrongful Birth" Following an Unsuccessful Sterilization Operation*, Summer 1978, 131-56.

This Article examines the question of civil liability arising, both in tort and in contract, as a result of the "wrongful birth" of a child following an unsuccessful sterilization operation. After a general overview of the concept and background of wrongful birth, the Article deals with tort liability in a sterilization-wrongful-birth action, suggesting in particular that there are four stages in the sterilization process at which a physician's conduct may fall below the standard required by law, and discussing the effect of negligence at each of the four stages. The alternative claim for breach of warranty is then examined, with emphasis on the practical difficulties involved in establishing contractual liability in this type of case. Finally, the Article discusses public policy and assessment of damages issues involved in the wrongful birth action, and evaluates the merits of some of the arguments that have been advanced under these headings—particularly the "overriding benefit" theory—to defeat claims for wrongful birth.

Shaw, Margery W., *Genetically Defective Children: Emerging Legal Considerations*, Fall 1977, 333-40.

Despite modern medical advances, births of genetically defective children still occur. The author outlines the problem of genetic disease, and describes the medical and legal advances that now make possible a reduction in its incidence. Then she cites—and briefly comments upon—some court cases brought by parents of genetically defective children against their physicians for allegedly failing to predict or to diagnose genetic defects in those children in time for the parents to exercise any procreative options such as sterilization, contraception, or abortion. In addition, the author

speculates on various questions that may arise in future litigation in this area—among them, the question of whether or not courts someday will endow genetically defective children with a cause of action against their parents for bringing them into the world.

Shepard, Ira M., *Health Care Institution Labor Law: Case Law Developments,* 1974-78, Spring 1978, 1-14.

This Article examines the key National Labor Relations Board and federal court interpretations of the much-heralded 1974 Health Care Institution Amendments to the National Labor Relations Act. It analyzes NLRB decisions that have resulted in a proliferation of separate employee bargaining units at health care facilities, and that have applied the strike notice provisions of the NLRA to labor disputes involving building trade employees engaged in construction at operating health care facilities. In addition, the Article examines the Board's decision to decline jurisdiction over employee unions representing interns and residents, and summarizes both the special NLRB rules designed to apply to union solicitation of employees at health care facilities and the conflicting circuit court decisions that have modified the Board's specialized solicitation rules.

Stewart, Douglas W., *The Battle over Blood Collection,* Spring 1977, 77-88.

The struggle for control of this nation's life-giving blood resources was, up until five years ago, largely a private affair between representative organizations of the blood collectors. The system that emerged from that struggle was declared unhealthy by several experts who complained that blood was too often unsafe or unavailable. Then in 1972 the government, predominantly the federal government, responded to public pressure and joined the fray. This Comment examines some legal, political, and policy aspects of the battle over blood collection—a battle from which no stable guiding force has yet evolved.

Wecht, Cyril H., *The Swine Flu Immunization Program: Scientific Venture or Political Folly?* Winter 1977-78, 425-45.

The author of this Article, an internationally recognized coroner perhaps best known among laymen for his incisive and tenacious criticism of the Warren Commission report on the Kennedy assassination, turns his attention to the federal government's 1976-1977 Swine Flu Immunization Program. Dr. Wecht contends that although this program may have been viewed by its key proponents as having great public health importance, or perhaps even political value, its creation and continuation nevertheless were scientifically unjustified. Furthermore, he contends, the federal government failed to inform the public adequately of important facts about the

program's origins and progress, and it mismanaged the program in several important respects. Among the topics he discusses are swine flu's epidemiological history (including the 1976 Fort Dix outbreak that propelled swine flu into the national consciousness); the key elements leading to the government's decision to immunize; the government's failure to re-evaluate the program seriously as problems arose; the shortcomings of the federal swine flu statute; the inadequacy of the government's investigation of the deaths of three persons in Pittsburgh within a few hours after being vaccinated (a matter that was of immediate concern to the author in his role as Coroner of Allegheny County, Pennsylvania); the long-delayed termination of the program following the emergence of a possible statistical link between the immunizations and an increase in the incidence of the Guillain-Barré Syndrome; the financial and human costs of the program; and the need for calmer, more objective decision making in future situations where immunization of the general populace is being considered.

Weiner, Stephen M., *Governmental Regulation of Health Care: A Response to Some Criticisms Voiced by Proponents of a "Free Market,"* Spring 1978, 15-33.

In this Comment, the Massachusetts Rate Setting Commissioner takes issue with the criticism of health care cost-containment regulation that was expressed by Professor Clark C. Havighurst in a recent edition of the *Journal,* and argues that instead of abandoning regulation in favor of various "free market" alternatives recommended by Professor Havighurst, the nation should find ways to make regulation work more effectively in the public interest. The author challenges Professor Havighurst on the ground that he fails to recognize (1) that the free market model is inadequate for evaluating regulatory activity and (2) that regulation is essentially a political process, and therefore regulatory objectives cannot and should not be defined in economic terms alone. What is needed, suggests Mr. Weiner, is acceptance of the need for, and validity of, regulation, and an examination of how regulation can best achieve its economic and political objectives. The key challenge for policy makers in the health care regulatory field, he asserts, is the clarification and implementation of appropriate relationships (1) between health care regulation and health care rationing; (2) between health care regulation and health care planning; and (3) between health care regulation and health care competition.

Weiner, Stephen M., *"Reasonable Cost" Reimbursement for Inpatient Hospital Services Under Medicare and Medicaid: The Emergence of Public Control,* Spring 1977, 1-47.

In 1965 Congress, through amendments to the Social Security Act, established the Medicare and Medicaid programs and mandated that hospitals participating in those programs be reimbursed for the "reasonable cost" of

providing inpatient services to Medicare and Medicaid patients. In this Article, the Chairman of the Massachusetts Rate Setting Commission contends that HEW—which, like Congress, was anxious to stimulate the voluntary participation of hospitals in the Medicare and Medicaid programs—interpreted "reasonable cost" with excessive liberality toward participating hospitals and created a fiscally burdensome and inflationary reimbursement system lacking principles of efficiency and planning. The author then describes a series of attempts—varying in scope and success—to reformulate "reasonable cost," as applied to Medicare and Medicaid reimbursement, in a manner more consistent with the author's concept of sound public policy. The culmination of these attempts to date, he states, was Public Law 92-603 (Social Security Amendments of 1972), which introduced to the reimbursement system the concepts of (1) tough evaluation of the reasonableness of hospital costs, with emphasis on efficiency, utilization, and planning; (2) shifting *de facto* power over reimbursement rates away from the hospitals and into the hands of the agencies that purchase their services; and (3) increased public scrutiny of hospital operations. The author contends that this law, and the philosophy which underlies it, represents a healthy balancing of the needs of hospitals and the needs of the public; that the trend toward cost control and public control which the law embodies has been substantially furthered in those states which have statutorily established hospital budget or charge review programs; and that such trend will continue and profoundly affect any national health insurance plan enacted in the future.

BOOK REVIEWS BY JAY ALEXANDER GOLD

Genetics, Law, and Social Policy. By Philip Reilly (Cambridge, Mass.: Harvard University Press, 1977), Winter 1979, 397-402.

Health Controls Out of Control: Warnings to the Nation from Massachusetts. By David M. Kinzer. Foreword by Paul A. Samuelson. Introduction by Robert M. Cunningham, Jr. (Chicago: Teach 'em, Inc., 1977), Winter 1977-78, 455-61.

In the Matter of Karen Quinlan: The Complete Legal Briefs, Court Proceedings, and Decision in the Superior Court of New Jersey (Arlington, Va.: University Publications of America, 1975), Spring 1977, 89-94.

In the Matter of Karen Quinlan, Vol. II: The Complete Briefs, Oral Arguments, and Opinion in the New Jersey Supreme Court (Arlington, Va.: University Publications of America, 1976), Spring 1977, 89-94.

Pain and Profit: The Politics of Malpractice. By Sylvia Law and Steven Polan (New York: Harper and Row, 1978), Fall 1978, 255-65.